

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TEXAS
TYLER DIVISION**

EMMETT BANKS, #01968852,

Plaintiff,

v.

KEITH GORSUCH, et al.,

Defendants.

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Case No. 6:20-cv-360-JDK-JDK

**ORDER ADOPTING REPORT AND RECOMMENDATION
OF THE UNITED STATES MAGISTRATE JUDGE**

Plaintiff Emmett Banks, a prisoner confined at the Texas Department of Criminal Justice Beto Unit and proceeding pro se, filed this section 1983 action. Plaintiff's complaint was severed out of civil action number 6:20-cv-302, (Docket No. 1), into this cause of action. The complaint was referred to United States Magistrate Judge, the Honorable John D. Love, for findings of fact, conclusions of law, and recommendations for the disposition of the case.

On August 21, 2020, Judge Love issued a Report recommending that Plaintiff's case be dismissed, without prejudice, for Plaintiff's failure to comply with an order of the Court. Docket No. 9. A copy of this Report was sent to Plaintiff at his address, with an acknowledgment card.

Plaintiff has filed timely objections. Docket No. 10. In his objections, Plaintiff insists that he is a class member of the "class action" in case number 6:20-cv-302. He also notes: "We, of the 'class action' civil case 6:20-cv-302, do not wish to be severed


into different cases.” Plaintiff further states that this cause number should be dismissed, without prejudice, because he seeks to proceed only in the class action.

Contrary to Plaintiff’s contentions, this Court recently denied Plaintiffs’ motion to certify a class action. *See* Case No. 6:20-cv-302, Docket No. 56. Accordingly, there is no class action in case number 6:20-cv-302 for Plaintiff Banks to be a member of. Plaintiff’s objections indicate that he does not wish to proceed on his own in this specific case, as he specifically states that this case should be dismissed, and that he only seeks to proceed in a class action.

The Court has conducted a careful de novo review of record and the Magistrate Judge’s proposed findings and recommendations. *See* 28 U.S.C. §636(b)(1) (District Judge shall “make a de novo determination of those portions of the report or specified proposed findings or recommendations to which objection is made.”). Upon such de novo review, the Court has determined that the Report of the United States Magistrate Judge is correct, and Plaintiff’s objections are without merit.

Accordingly, it is **ORDERED** that Plaintiff’s objections (Docket No. 10) are overruled and the Report of the Magistrate Judge (Docket No. 9) is **ADOPTED** as the opinion of the District Court. It is also **ORDERED** that this civil rights proceeding is **DISMISSED**, without prejudice, for Plaintiff’s failure to comply with an order of the Court. Finally, it is **ORDERED** that any and all motions which may be pending in this civil action are hereby **DENIED** as **MOOT**.

So **ORDERED** and **SIGNED** this 3rd day of November, 2020.



JEREMY D. KERNODLE
UNITED STATES DISTRICT JUDGE